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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 597

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

CLARENCE M. FREEDMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 11–21) is reported in 34 B. T. A. 956. The opinion of the Circuit Court of Appeals for the Third Circuit (R. 62–65) is reported in 92 F. (2d) 150.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Third Circuit was entered on August 23, 1937. (R. 65.) Petition for certiorari was filed on November 23, 1937, and was granted on Decem-

ber 6, 1937 (R. 66). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner's compensation as attorney in the Pennsylvania Department of Justice, paid to him by the Secretary of Banking out of the assets of insolvent banks in the course of liquidation, is subject to the Federal income tax.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix, *infra,* pp. 13–28.

STATEMENT

The facts in this case, as found by the Board of Tax Appeals (R. 11–16) are as follows:

The taxpayer is a lawyer, practicing his profession in Philadelphia, Pennsylvania. On October 2, 1931, the Attorney General of the Commonwealth of Pennsylvania directed to the taxpayer a letter reading as follows (R. 12):

> It gives me pleasure to appoint you an attorney in this Department assigned to the liquidation work of the Department of Banking. Your salary will be at the rate of $3,000.00 per annum.
>
> The Special Deputy Attorneys General who are assigned to this work in Philadelphia are being advised of your appointment and that you will be available to assist them

in any way in which they may find it necessary to call upon you.

The taxpayer accepted the appointment conferred by the above letter. He was thereafter continuously employed on matters relating to the liquidation of closed banks until March 9, 1935, when his employment was terminated on the occasion of a change in the political party in control of the state government. He was then directed to turn his files over to his successor. (R. 12.)

The Department of Justice and the Department of Banking are administrative divisions of the Commonwealth of Pennsylvania. The head of the Department of Justice is the Attorney General and the head of the Department of Banking is the Secretary of Banking, those offices being provided for by statute. The Attorney General has statutory power "to appoint and fix the compensation of special deputy attorneys general, and special attorneys, to represent the Commonwealth, or any department, board, or commission thereof, in special work or in particular cases." Purdon's Pennsylvania Statutes, Title 71, Section 296. The Secretary of Banking is by statute given broad powers over banks within the Commonwealth. When it appears to him that a bank is in an unsafe or unsound condition he may, after notice and hearing and with the consent of the Attorney General, take possession of the business and property of the bank; under certain conditions he may take posses-

sion without hearing and without the Attorney General's consent. When he takes possession of a bank, he is vested with "all the rights, powers, and duties of a receiver appointed by any court of equity in this Commonwealth;" while in possession of the bank he is "the representative of the creditors" thereof. The banking law provides that, in the case of banks the property of which is in the possession of the Secretary of Banking, all expenses in connection with such possession, and of continuing the business or of liquidation, "shall first be payable out of the funds of" such bank "including the compensation of special deputies, assistants, and others employed by the secretary to assist him in such proceedings; the allowance of all such expenses to be subject to the approval of the court." Purdon's Pennsylvania Statutes, Title 7, Sections 29, 49. (R. 12–13.)

The taxpayer was assigned to work under Special Deputy Attorneys General in Philadelphia County in connection with legal matters pertaining to closed banks in that county. The closed banks were being liquidated by the Secretary of Banking pursuant to statute. The taxpayer's duties consisted of attempting to collect debts due such closed banks, rendering legal opinions to the deputy receivers in charge thereof, handling the legal matters for the banking department that came up from surrounding counties, prosecuting suits in court, consulting with creditors, depositors, and stockholders

of closed banks concerning their claims, procuring substitute trustees for trust estates being administered by such banks, preparing, filing, and presenting accounts in the Orphans' Court, preparing data in connection with the proposed state banking code, and in general anything that was assigned by the Special Deputy Attorney General at the time. Such attorneys were considered by the Department of Justice as "available for any purpose at any time." (R. 13–14.).

The taxpayer handled legal matters for the state banking department in connection with the liquidation of the Northern Central Trust Company, the Darby Bank & Trust Company, the United States Bank & Trust Company, the Central Trust & Savings Company, the Mortgage Security & Trust Company, the Park Trust Company, and the Wharton Trust Company, among other closed banks in the Philadelphia area. The petitioner was one of approximately twenty lawyers assigned to like work in Philadelphia County. (R. 14.)

The particular work and the matters to which the taxpayer gave attention were determined by the Attorney General's office. He was free to use his discretion only in simple matters. In regard to all proposed litigation and appeals, he was required first to consult with his superior officers. He was required to follow prescribed forms issued by the Attorney General's office as to preparation of documents and pleadings. His legal opinions

were reviewed and often revised by his superiors before being issued. Likewise, briefs were reviewed and frequently entirely redrafted. All matters of policy in particular cases were decided by the Attorney General and his deputies. The taxpayer's advice to depositors of closed banks was limited to matters on which his superiors had ruled. All such attorneys were instructed to take no steps and render no opinions on any legal problem involved in closed banks without approval of the Attorney General. (R. 14.)

The taxpayer's duties and the manner in which they should be performed were prescribed in part by a large number of mimeographed circulars issued by the Attorney General at Harrisburg at frequent intervals and sent to all attorneys handling closed bank matters. Also, his instructions were received periodically from a Deputy Attorney General at regular meetings held for the purpose of discussing their problems and deciding on procedure. (R. 14–15.)

The taxpayer received no compensation for his services other than his $3,000 salary, but was reimbursed for his expenses. He was furnished with necessary office facilities. He was required to use official letterheads furnished by the Department of Justice, and signed his letters as "attorney" for the Department of Justice. The files in matters handled by him were considered the property of the State and were turned over by him to his suc-

cessor when his employment was terminated. While the Department of Justice could have required all his time, and had first call on his services, he was permitted to engage in private practice. In 1932 he spent more than 50 per cent of his time on state business. He had to give up certain regular employment to accept the employment in the Department of Justice. His professional income for 1932, aside from the $3,000 salary, was $2,735.60. He was not a member of a law firm. (R. 15.)

The taxpayer's salary was paid to him semi-monthly by checks drawn by representatives of the state banking department in charge of closed banks in Philadelphia, the checks being countersigned by the Secretary of Banking at Harrisburg. In the early part of 1932 his salary was charged against funds of three closed banks the assets of which had been taken over by the Secretary of Banking, and later in the year it was charged against funds of four closed banks, although his services were not confined to matters relating to the affairs of those particular banks. The banks against which the taxpayer's salary was charged were determined by the Attorney General and the Secretary of Banking. The salaries of attorneys handling matters relating to the several closed banks were ordinarily paid out of the funds of such banks in approximate proportion to the amount of work done for each bank. (R. 15.)

Taxpayer did not include in his income tax return for 1932 the $3,000 received as compensation for services rendered to the department of banking (R. 16). The Board of Tax Appeals held that this compensation was not immune from Federal taxation and was includable in the taxpayer's taxable income for 1932 (R. 21). The Circuit Court of Appeals reversed the decision of the Board of Tax Appeals (R. 65).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the compensation received by the taxpayer as a Special Deputy Attorney General of Pennsylvania was not subject to Federal income taxation.

2. In failing to hold that the taxpayer was neither an officer, an employee, nor an agent of the State, engaged in an essential governmental function of the State.

3. In failing to hold that even if the taxpayer were an officer, an employee, or an agent of the State, Federal taxation of the compensation received by him out of funds of insolvent state banks imposes no prohibited burden upon the State.

4. In reversing the decision of the Board of Tax Appeals.

ARGUMENT

In the interests of brevity and to avoid needless repetition the arguments made under Points I and

II (pp. 11–35) in the brief for the petitioner in *Helvering* v. *Therrell*, No. 128, October Term, 1937, and in the brief (pp. 11–23) for the respondent in *McLoughlin* v. *Helvering*, No. 287, October Term, 1937, are adopted and incorporated herein by reference. The remaining discussion is directed only toward the particular provisions of the Pennsylvania statutes relating to the liquidation of closed banks.

I

THE SERVICES OF RESPONDENT WERE NOT IN CONNECTION WITH AN ESSENTIAL GOVERNMENTAL FUNCTION

In 1932, the Pennsylvania statutes[1] provided that the Secretary of Banking, after taking possession (Purdon's Statutes, Title 7, Sec. 21, *infra*), if he is not enjoined from continuing the proceeding (Sec. 23, *infra*), is vested with title to the assets of the corporation, has the status of a receiver, and is "the representative of the creditors" (Sec. 29, *infra*). He may either suspend business or continue to conduct it, pending his decision as to liquidation of the corporation (Sec. 27, *infra*). He has full powers to sue and is liable in the suits

[1] These provisions are summarized in the margin of this Court's opinion in *Pennsylvania* v. *Williams*, 294 U. S. 176, 182–184. They were repealed, after the taxable year, by Laws of 1933, No. 111, effective July 3, 1933, which provided a new Department of Banking Code, containing (Secs. 601–1014) more or less comparable provisions.

which were pending at the time he took possession, or for the recovery of specific property (Sec. 35, *infra*). After filing notice of a determination to liquidate (Sec. 41, *infra*), he is to file a partial or final account (Sec. 45, *infra*), and after confirmation by the court and distribution of funds (Sec. 46, *infra*), is discharged from liability (Sec. 47, *infra*).

Those who share in this distribution are the depositors and creditors (Sec. 45, *infra*). If a balance remains after paying their claims, the stockholders may elect, or, in their default the court may appoint, a liquidating trustee to take the place of the Secretary (Sec. 50, *infra*).

All expenses of the proceeding are to be paid out of the funds of the insolvent corporation (Sec. 49, *infra*). Indeed, the Secretary is authorized to surrender possession when there are no funds with which to continue the business or to liquidate it (Sec. 28, *infra*).

It is evident that in this case also the purpose of the proceeding is not to regulate the conduct of banking generally, but economically to conserve or to wind up the affairs of a particular business enterprise for the benefit of its creditors and stockholders. It follows that it is not an essential governmental function of the State and that the compensation of respondent may be taxed by the Federal Government.

II

A TAX ON COMPENSATION PAID FROM PRIVATE FUNDS CONTAINS NO THREAT TO THE DUAL SYSTEM OF GOVERNMENT

Sec. 49 of Purdon's Pennsylvania Statutes, Title 7, *infra,* provides that "all expenses of the taking and maintaining possession of the business and property or the continuing of the business by the secretary, and all expenses of liquidation under the provisions of this act, shall first be payable out of the funds of such corporation or person, including the compensation of special deputies, assistants, and others employed by the secretary to assist him in such proceedings; the allowance of all such expenses to be subject to the approval of the court." The respondent's compensation was charged against the funds of three or four closed banks during the taxable year 1932. While the work was not wholly confined to these banks, the salaries of the attorneys assigned by the Attorney General to liquidation work in the Department of Banking were paid out of the funds of each closed bank in approximate proportion to the work done for each. (R. 15.) Respondent thus was paid from private rather than from state funds He was paid directly out of the particular banks with the affairs of which he was chiefly concerned. He is, therefore, to be contrasted with the subordinate employees of the Department of Banking who were engaged in regulatory, as opposed to liquidating activities. These employees were paid by the Treasurer of the State from the Department of

Banking fund," made up by assessments upon solvent banks. (R. 49–50, 53.) See Purdon's Statutes, Title 7, Section 9 (a), *infra*. Since the respondent was paid out of funds in which the State had no interest, but were being held for the sole benefit of depositors, creditors and stockholders of the insolvent banks, a Federal tax on this compensation contains no possibility of endangering our dual system. Such was the decision of this Court in *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 174.

CONCLUSION

The tax in question is not forbidden by the implication of the Constitution, in that it is imposed (1) with respect to an activity which is not an essential governmental function and (2) on compensation derived from private rather than state funds. Either of these considerations is sufficient to support the determination of the Commissioner and the decision of the Board of Tax Appeals. The judgment of the court below should, therefore, be reversed.

Respectfully submitted.

STANLEY REED,
Solicitor General,
JAMES W. MORRIS,
Assistant Attorney General,
SEWALL KEY,
BERRYMAN GREEN,
Special Assistants to the Attorney General.
WARNER W. GARDNER,
Special Attorney.

DECEMBER, 1937.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

Purdon's Pennsylvania Statutes, Annotated, Permanent Edition, Title 7:

SEC. 9. *Maintenance of department and assessment of expenses.*

(a) *Expenses.*—All moneys derived by the department from fees, assessments, charges, penalties, and otherwise, shall be paid by the Secretary, through the Department of Revenue, into the State Treasury for safe-keeping, and shall, by the State Treasurer, be placed in a separate fund, to be available for the use of the department upon requisition of the secretary. All such moneys so paid into the State Treasury, are hereby specifically appropriated to the department for the purpose of paying the salaries of the secretary, the deputies, the

examiners, and the other employes of the department, the expenses of the department; * * *

The Auditor General shall, upon requisition of the secretary from time to time, draw warrants upon the State Treasurer for the amounts specified in such requisitions, not exceeding, however, the amount in such fund at the time of the making of any such requisition.

(b) *Assessments of Expenses upon Corporations and Individuals*—All the expenses inourred in and about the conduct of the business of the department, including the cost of the regular examinations of corporations and persons under the supervision of the department, the compensation of the secretary, deputies, examiners, and other employes of the department, together with all other general or overhead expenses of the department, shall be charged to and paid by the corporations and persons subject to the supervision of the department, in equitable proportions, at such times and in such manner, as the secretary shall by general rule or regulation annually prescribe:

* * * * *

On failure or refusal of any such corporation or person, after thirty days' written notice, to pay any sum lawfully assessed or charged against it or him by the secretary under the provisions of this clause, the secretary shall call upon the Department of Justice to bring an action at law to recover the same.

Purdon's Pennsylvania Statutes, Title 7.

SEC. 19. *Jurisdiction of courts.*—Whenever it shall become the right or duty of the Attorney General to proceed against any

corporation or person under the supervision of the department, pursuant to the provisions of this act, he may, in his discretion, proceed either in the court of common pleas of Dauphin County or in the court of common pleas of the county where the banking house or other place of business of such corporation or person is located.

* * * * * *

SEC. 21. *Power of secretary to take possession.*—The secretary may, after hearing had upon notice given, with the approval and consent of the Attorney General, take possession of the business and property of any corporation or person subject to the supervision of the department, whenever it shall appear to him that such corporation or person:

I. Has violated any law regulating its or his business, and has persisted in such violation in disregard of an order duly made by the secretary;

II. Is conducting business in an unauthorized or unsafe manner and has persisted in disregard of an order duly made by the secretary;

III. Is in an unsafe or unsound condition to continue business: Provided, in such case, That the secretary may forthwith, without such hearing and consent of the Attorney General, take possession of the business and property of any such corporation or person receiving moneys on deposit, when and if, in his opinion the protection of depositors and the public requires such peremptory action;

IV. Has an impairment of capital, which has not been restored or made good within the time fixed by order of the secretary;

V. Has suspended payment of obligations.

VI. Has neglected or refused to comply with the terms of any lawfully issued order of the secretary;

VII. Has refused, upon proper demand, to submit the records and affairs of the business to the secretary, a deputy, or any duly authorized examiner or agent of the department;

VIII. Has refused to be examined upon oath or affirmation, regarding such affairs;

IX. Is in the hands of a receiver appointed by any court, or in any bankruptcy proceeding, or of an assignee or trustee for creditors appointed by such corporation or person.

The secretary may, in like manner, take possession of the business and property of any private or unincorporated bank, or the estate of any private banker, otherwise exempt from the supervision of the department, whenever such private or unincorporated bank shall have made an assignment for the benefit of creditors, or for any of the causes mentioned hereinbefore in this section.

SEC. 22. *Certificate of taking possession.*—When the secretary shall have duly taken possession of the business and property of a corporation or person as provided in section twenty-one of this act, he shall forthwith make, under his hand and official seal, a certificate setting forth that he has so taken possession, and shall file such certificate in his office, and cause a certified copy thereof to be filed in the office of the prothonotary, who shall index the same in the judgment index under the name of the corporation or person as defendant and the name of the secretary as plaintiff.

From and after the filing of such certified copy in the office of the prothonotary, the secretary shall supersede any receiver previously appointed by any court for, or any assignee or trustee for creditors appointed by, such corporation or person.

Such superseded receiver, assignee, or trustee shall forthwith file his account in the court having jurisdiction thereof, and pay over and deliver to the secretary all moneys, securities, assets, and property of such corporation or person in his custody, possession, or control. Said court shall allow credit for expenses and for the disbursements properly incurred or made prior to the taking possession by the secretary, and shall allow proper compensation to said receiver, assignee, or trustee, and his counsel, which, when determined, shall be paid out of the funds of said corporation or person in the hands of the secretary.

SEC. 23. *Injunction to restrain secretary.*—Whenever the secretary takes possession of the property and business of any corporation or person, such corporation or person may, at any time within ten days, apply to the court for an order requiring the secretary to show cause why he should not be enjoined from continuing such possession. The secretary may be served personally wherever found within the State, or by leaving a copy with the deputy in charge of his office, or by serving the special deputy appointed by him in such proceeding. At the hearing, a copy, certified by the secretary or one of his deputies, of any report of a duly instituted examination of such corporation or person shall be prima facie evidence of the facts therein stated; and if, from such report or reports or other evidence, there

shall appear to be just cause for the taking and continuing of possession by the secretary, he shall not be enjoined, unless such report or reports or other evidence shall be overcome by proper proof produced by such corporation or person, in which event the court shall direct the secretary to refrain from further proceedings and to surrender such possession.

SEC. 24. *Special agents and assistants.*—The secretary may, by the certificate of taking possession provided for in section twenty-two of this act, or by a subsequent certificate in like manner made and filed, appoint one or more special deputies as agent or agents to assist him in continuing or liquidating the business and affairs of any corporation or person in his possession. He may, from time to time, delegate to such special deputy or deputies such duties connected with such continuation or liquidation as he may deem proper. He may employ such expert assistants and legal counsel, and may retain such of the officers and employes of such corporation or person, as he may deem necessary in the continuation of the business or the liquidation and distribution of the assets. He shall require such security as he may deem proper from his agents and assistants appointed pursuant to the provisions of this section.

* * * * *

SEC. 27. *Suspension or continuation of business.*—The secretary is authorized, upon taking possession of the property and business of such corporation or person, to continue or suspend the business for such period as he may deem necessary to enable him to determine whether to liquidate the affairs of such corporation or person, and, during

such period, to take such action as in his judgment is necessary to conserve the assets and business.

SEC. 28. *Surrender of possession by secretary.*—The secretary may, upon conditions approved by him, surrender possession for the purpose of permitting such corporation or person to resume business to sell or convey its or his property and franchise, or to merge or consolidate its or his business with that of another corporation or person in accordance with the laws of this Commonwealth, or because he is without funds to continue or liquidate the business and property of which he has taken possession; but he shall not authorize any decrease of capital stock by a corporation except upon compliance by the corporation with the provisions of law as to such decrease.

Whenever the secretary shall surrender possession under the provisions of this section, he shall forthwith issue an order, under his official seal, authorizing such corporation or person to resume business, to sell or convey its or his property and franchises, or to merge or consolidate as aforesaid, and shall file said order in his office, and cause a certified copy thereof to be filed in the office of the prothonotary, who shall thereupon cause the entries upon the judgment index made pursuant to section twenty-two of his act to be satisfied.

SEC. 29. *Status and powers of secretary as receiver.*—Except as herein otherwise provided, the secretary shall, when he has taken possession of the business and property of a corporation or person, have all the rights, powers, and duties of a receiver appointed by any court of equity in this Commonwealth; and he shall be vested, in his

official capacity, with all the rights, powers, and duties of such corporation or person and with all the property of such corporation or person, including debts due, liens, or securities therefor, and rights of action or redemption, whether or not the property of such corporation or person, including debts due, liens, or securities therefor, and rights of action or redemption, are held in the name of such corporation or person, or in the name of some other corporation or person, but actually the property of the corporation or person of which, or of whom, the secretary has possession.

He shall be the representative of the creditors of the corporation or person, and entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or incumbrance, which could have been avoided by the creditors or any of them, or by which it is attempted to give any creditor unlawful preference over another.

He may, with leave of court obtained on petition after notice to all creditors of whom he has knowledge, surrender to the corporation or person any assets, including choses in action, whether the subject of pending proceedings or not, which are burdensome and of no advantage to creditors.

* * * * *

SEC. 31. *Continuance of possession; exceptions.*—When the secretary shall have duly taken possession of the business and property of corporation or person as provided in section twenty-one of this act, he shall hold such possession until the affairs

of such corporation or person have been liquidated by him, unless:

I. He shall have been directed by order of court to surrender such possession pursuant to the provisions of section twenty-three of this act,

II. He shall have permitted a resumption of business, or a sale or conveyance of property and franchises, or a merger or consolidation, pursuant to the provisions of section twenty-eight of this act,

III. The stockholders of such corporation, after payment of all creditors in full, shall have elected a trustee or trustees, to continue the liquidation of such corporation, or the court shall have appointed such trustee or trustees, pursuant to the provisions of section fifty of this act, and such trustee or trustees shall have duly qualified to take possession of the remaining assets of such corporation; or,

IV. The depositors and other creditors of such person and the expenses of such liquidation shall have been paid in full.

* * * * *

SEC. 35. *Actions and suits.*—For the purpose of executing any of the powers and performing any of the duties hereby conferred and imposed upon him, the secretary may, in the name of the corporation or person, prosecute and defend any and all actions and proceedings at law, in equity, or otherwise, pending at the time when the secretary takes possession of the business and property of such corporation or person.

He may, by bill of discovery or other legal or equitable proceeding, obtain information of, and sue for and recover, any assets, debts, or damages, which such corporation or person might sue for and recover, or which any

of the creditors might make available for the payment of their claims.

He may, at any time while he is in possession of the property and business of a corporation, institute and maintain against the directors, trustees, managers, or officers, any action or proceeding which is vested in such corporation or in the stockholders or creditors thereof.

He shall be liable to suit, in his representative capacity, by any person seeking to recover specific property, if such property could have been recovered as against the creditors of the corporation or person levying an execution thereon.

* * * * *

SEC. 41. *Notice to depositors and creditors.*—When the secretary shall have determined to liquidate the affairs of such corporation or person, he shall forthwith give written or printed notice to all depositors to produce to him their deposit or pass books for settlement, stating in such notice the amount which the books of the corporation or person show to be due to each depositor, subject to outstanding checks, and notifying such depositors that, unless a settlement of the deposit or pass books shall show a different amount to be due, or unless a depositor shall, within four months from the date of such notice, make proof, in the matter hereinafter set forth, that the amount due him differs from the amount as shown by the books of the corporation or person, the amount last mentioned will be conclusive as to the amount of the claim of such depositor, subject, as aforesaid, to any outstanding checks.

The secretary shall, at the same time, give written or printed notice to all creditors

other than depositors, so far as known to him, to make proof of their claims in the manner hereinafter set forth, within four months from the date of such notice, or be debarred from coming in upon the fund.

He shall also advertise such notices to depositors and other creditors in a newspaper, and in the legal newspaper, if any, designated by rules of court for publication of legal notices in said county, once a week for four successive weeks.

* * * * *

SEC. 45. *Partial or final account; objection.*—At the expiration of the time fixed by the notice and advertisement for the presentation of claims prescribed in section forty-one of this act, the secretary may file a partial or final account, consisting of a statement of receipts and expenditures, together with a list of the claims which have been allowed, and, separately, a list of the claims which have been objected to or are disputed, showing, as to all claimants, the names, addresses, and amounts.

If no account is filed within a year from the time when the secretary takes possession, any party interested may petition the court for an order on the secretary requiring the filing of an account.

Any account filed by the secretary shall be duly verified by him under oath or affirmation. Upon the filing thereof, he shall give written or printed notice, to all the depositors and other creditors known to him, of such filing, and that, unless objections shall be filed within thirty days from the date thereof, the same will be confirmed absolutely. He shall also, at the same time, advertise such notice in two newspapers once a week for four successive weeks.

During such period of thirty days, any depositor, other creditor, stockholder, or anyone having any interest, may file in the court objections in writing to said account or to the allowance of any of said claims, a copy of which objections shall forthwith be served upon the claimant whose claim is objected to, or his counsel, and upon the secretary, or his counsel, or the special deputy appointed by him in such proceeding.

SEC. 46. *Distribution.*—If, at the expiration of said period of thirty days from the filing of the account, no objections shall have been filed thereto, the same shall be confirmed absolutely. In case objections or exceptions are filed to any claim or claims, the account shall be confirmed absolutely as to those claims against which no objections or exceptions have been filed, and a partial or final dividend, as the case may be, shall be declared and paid by the secretary on all claims as to which no objections or exceptions have been filed. In case there shall be any disputed claim or any claim to which objections shall have been duly filed, the dividend shall be calculated as if all claims were valid and approved, and, after deducting and setting apart such portion of the dividend as may be declared on claims, in accordance with the priorities fixed by law, which are disputed or objected to, the balance shall be distributed among the other claims. If all or any of the claims disputed or objected to shall thereafter be determined to be valid, they shall then receive their portions of such dividends in accordance with the priorities fixed by law. If all or any of such claims be determined to be invalid, the portions of such dividend set apart for them shall be distributed to the valid claims.

SEC. 47. *Conclusiveness of confirmation and distribution; records; final destruction.*—The confirmation of a partial account and distribution thereunder, as aforesaid, shall be conclusive only as to the fund distributed, and shall not prevent the proof and allowance, out of the fund involved in any subsequent account, of claims not presented in time for allowance out of such previous fund.

The confirmation of a final account and distribution thereunder, after the objections thereto, if any, have been adjudicated as hereinafter provided, shall be conclusive; and shall work and effect a discharge of the secretary and all deputies or their sureties, from all liability in the matter; and the secretary or his successor, except as hereinafter provided in section fifty of this act, is authorized and empowered to destroy all records belonging to the corporation or person in his possession at the expiration of seven years from the date of the absolute confirmation of the final account of the secretary.

* * * * *

SEC. 49. * * * All assessments, charges, and penalties due to the department by such corporation or person, all expenses of the taking and maintaining possession of the business and property or the continuing of the business by the secretary, and all expenses of liquidation under the provisions of this act, shall first be payable out of the funds of such corporation or person, including the compensation of special deputies, assistants, and others employed by the secretary to assist him in such proceedings; the allowance of all such expenses to be subject to the approval of the court.

SEC. 50. *Distribution of balance; liquidating trustees.*—If, after the filing and confirmation of the final account of the secretary, and the payment of all creditors in full, and the return to stockholders, who have paid to the secretary the amounts demanded pursuant to section thirty-seven of this act, of their pro rata shares of any such amounts not necessary to pay creditors in full, there shall remain a balance in the hands of the secretary, he shall call a meeting of the stockholders by serving written or printed notice upon them at least thirty days before the day fixed for the meeting.

At such meeting, the stockholders shall elect by ballot a trustee or trustees for the purpose of completing the liquidation. A majority of the stock present in person or by proxy shall be necessary to elect. Should the stockholders fail or refuse to elect, the secretary or any stockholder may petition the court for the appointment of such trustee or trustees, who, when appointed, shall give bond to the Commonwealth in such amount, with such surety, and on such conditions, as the court may direct.

When such trustee or trustees have been duly elected or appointed as aforesaid, the secretary shall then transfer, convey, and deliver to such trustee or trustees all the assets of the corporation then remaining in his hands. He shall thereupon be discharged from all further liability to such corporation and its creditors, and shall file a certified copy of the proceedings of said stockholders' meeting in his office, and cause a certified copy thereof to be filed in the office of the prothonotary. No powers subject to

the supervision of the department shall thereafter be exercised by such corporation, except by permission of the secretary, and after compliance by such corporation with all the requirements of law as to a new corporation desiring to exercise such powers.

Treasury Regulations 77:

ART. 56. *State contracts.*—The profit of an independent contractor from a contract with a State or political subdivision thereof must be included in gross income. Where warrants are issued by a city, town, or other political subdivision of a State, and are accepted by the contractor in payment for public work done, the fair market value of such warrants should be returned as income. If for any reason the contractor upon conversion of the warrants into cash does not receive and can not recover the full value of the warrants so returned, he may deduct from gross income for the year in which the warrants are converted into cash any loss sustained, and if he realizes more than the value of the warrants so returned he should include such amount in his gross income of the year in which realized.

ART. 643. *Compensation of State officers and employees.*—Compensation paid to its officers and employees by a State or political subdivision thereof for services rendered in connection with the exercise of an essential governmental function of the State or political subdivision, including fees received by notaries public commissioned by States, is not taxable. Compensation received for services rendered to a State or political subdivision thereof is included in gross income unless (a) the person receives such compensation as an officer or employee of a State

or political subdivision, and (b) the services are rendered in connection with the exercise of an essential governmental function. The commissions of receivers appointed by State courts are taxable.

An officer is a person who occupies a position in the service of the State or political subdivision, the tenure of which is continuous and not temporary and the duties of which are established by law or regulations and not by agreement. An employee is one whose duties consist in the rendition of prescribed services and not the accomplishment of specific objects, and whose services are continuous, not occasional or temporary. * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1937